

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

A-2057

DATE OF INTRODUCTION:

February 7, 2008

SPONSOR:

Assemblyman Connors

DATE OF RECOMMENDATION:

April 17, 2008

IDENTICAL BILL:

COMMITTEE:

Assembly Appropriations Committee

DESCRIPTION:

The bill exempts certain purchases by school food service providers from the sales and use tax.

ANALYSIS:

This bill provides for an exemption from sales and use tax of supplies, materials and equipment purchased by school food service providers used directly and exclusively in operating a food service in a public, nonpublic or charter school pursuant to a contract with a board of education, board of trustees or person having responsibility for the operator of the school in this State.

Generally, New Jersey schools are exempt from sales and use tax on purchases made with school funds under N.J.S.A. 54:32B-9. This bill seeks to create an exemption based on a taxpayer's contractual relationship to an exempt entity.

The Bill's broad language leads itself to many administrative and enforcement problems. The Bill does not define "supplies, material and equipment" or "food service management provider." This language allows for subjective interpretation and may result in fraudulent purchases. Enforcement and administrative problems arise because of the inherent difficulty in determining whether a purchaser and the purchase are qualified for the exemption.

The Commission recommends that in lieu of providing a specific exemption for school food service providers, the proposal be drafted to amend N.J.S.A. 54:32B-9 to address agency relationships between contractors and exempt entities. The existence of an agent/principal relationship determines whether the purported agent may utilize the sales tax status of the principal.

In the alternative, the food service provider may be able to resolve some of the sales tax issues itself but restructuring its transactions. Most of its purchases could be reframed as

purchasers for resale. Thus, the sales tax on purchases of equipment and supplies that immediately become the property of the school or School Board would be eliminated.

The Commission also suggests that school food service providers could structure their relationships with Boards of Education in order to establish a true agency relationship.

According to the legislation, the act shall take effect immediately and shall be retroactive to July 1, 1999. This will have the result of ending any pending assessments. However, it is not clear how past assessments should be handled. Pursuant to N.J.S.A. 54:32B-20, if application is made within four years from the date of the payment of the tax, the Division is required to issue a refund of tax paid in error, illegally or unconstitutionally. Thus, if the intent of the legislature is to have the Division issue refunds, this statute must be amended to permit refunds of tax remitted on and after July, 1, 1999.

Since there was no taxpayer reliance on unsettled law and the money is not to be refunded to the municipality, the bill should include a provision prescribing a window such as 30 days, in which application for refund should be made. This provision is necessary in order to restore certainty to public finances and to mitigate a potential windfall from being returned to the vendors who are engaged in food service contracts with municipalities.

The Commission has considered an identical Bill in a previous session and found the same issues remain in its current drafting that existed at that time. The Commission would suggest that the affected parties take into consideration the suggestions stated above when contemplating any future drafts.

RECOMMENDATION:

The Commission does not recommends enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 2

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0